IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Letters Patent Appeal No. 292 of 2000
in
Writ Petition No.1964 of 1999

1. Shankar Govind Patade
and another ..Petitioner

vs.

1. Metal Box India Ltd. & Ors. ..Respondents

Shri Dushyant Purekar for appellant
Shri Ameya Tamhane for respondent no.3.

CORAM: A.P.SHAH AND
S.C.DHARMADHIKARI JJ
13th December,2004

P.C.

Heard learned counsel appearing for the appellant and respondent no.3. Respondent nos. 1 and 2 are absent despite service.

2. This appeal is directed against the order dated September 8, 2000 whereby the learned single Judge dismissed the appellants' writ petition challenging the order passed by the Industrial Court in Misc.Application (ULP) No.867 of 1998. The appellants were employees of respondent no.1 company and they were sent on secondment to NAFCEL Jeddah Saudi Arebia for a period of 2 years vide its letter dated 14th February, 1985. The term of

secondment was thereafter extended upto 3rd July, 1990. The appellants after duly completing the extended secondment period returned to India in the year 1990.

3. In the mean time the respondent company declared lock out in all its units and consequently the appellants could not report for duty.

4. In pursuance of the settlement arrived with the respondent no.3 Union respondent no.1 company lifted the lock out at Worli Unit on 16th January, 1992 in phasewise manner. Reopening of Worli factory was on condition that the workers would be required to work in rotation. The grievance of the appellants is that inspite of being on roll of respondent no.1 they were not called for work till rotation was recycled again on 1st April, 1992 and the appellants were not allowed to resume their duty. The respondent no.3 which is workers Union filed Complaint (ULP) No.867 of 1992 in the Industrial Court, Bombay on behalf of the present appellants alleging that company has committed unfair labour practice under items 5 and 9 of Schedule IV of M.R.T.U.and P.U.L.P.Act. The Industrial Court on 23rd February, 1995 passed

interim order directing the company to pay Rs.1,000/- p.m. as interim wages to the appellants. The company failed to comply with the interim order and contempt petition came to be filed in this Court and the said Contempt Petition is still pending. It appears that since no work was offered to the appellants nor any interim wages were paid the appellants were constrained to leave Mumbai and goback to their native place. It appears that the complaint was placed for hearing on 2nd December, 1996. The Union which was complainant before the Industrial Court failed to remain present and consequently the complaint came to be dismissed for non prosecution. The appellants submit that they came to know about dismissal of their complaint only in June, 1998. Immediately they preferred Misc.Application (ULP) No.18 of 1998 for restoration of the complaint. Misc.Application was dismissed by the Industrial Court on 15th March, 1999 and writ petition challenging the order of the Industrial Court was dismissed by the learned single Judge.

5. We have heard the arguments of the learned Counsel appearing for the appellants and respondent no.3. Perused the order of the Industrial Court.

It appears that the Industrial Court dismissed the Misc.Application mainly on the ground that separate affidavit of the concerned workmen was not filed on record. The application was signed only by the Union Secretary and there was really no need to file a separate affidavit of the workman. The workmen were represented by Union for their grievance and, therefore, the Industrial Court was not right in holding that separate affidavit by workmen was necessary. In our opinion, it would be harsh to punish the workmen for the fault of their Union who failed to represent the matter diligently. In the facts and circumstances of the case we are satisfied that the application for restoration ought to have been granted by the Industrial Court. We, therefore, set aside the order passed by the learned single Judge as well as order of the Industrial Court. Misc.Application No.18 of 1998 is hereby allowed and Complaint (ULP) No.867 of 2992 is restored to file of Industrial Court. Industrial Court is directed to decide the complaint expeditiously on its own merits within a period of six months.

6. Appeal is disposed of accordingly.